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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,015	05/23/2001	Charles P. Tresser	CHA920010005US1	9978
23550	7590	06/28/2007	EXAMINER	
HOFFMAN WARNICK & D'ALESSANDRO, LLC			GREIMEL, JOCELYN	
75 STATE STREET			ART UNIT	PAPER NUMBER
14TH FLOOR			3693	
ALBANY, NY 12207			MAIL DATE	DELIVERY MODE
			06/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/864,015	TRESSER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jocelyn Greimel	3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 February 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 February 2007 has been entered.

### ***Status of Claims***

2. Claims 1-24 are currently pending. Claims 1, 11 and 15 are currently amended.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claim 1-21, 23-28 and 30-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US Patent Pub. US 2002/0065766 A1, hereinafter**

**Brown).** In reference to claims 1, 11, 15, 25 and 34, Brown teaches the **system, medium, process** and **method** of an electric marketplace via a network comprising:

- a. broadcasting a price quote from a market maker over the network at a beginning of a current trading interval (0015+);
  - b. distributing the price quote over a plurality of network nodes within the network (0015+);
  - c. receiving an order submitted from a participant who is in communication with one of the network nodes (0015; 0044-0067);
  - d. time stamping the order when the order passes through a trusted node; delivering the order to the market maker; and examining the time stamp of the order to determine if the order qualifies for processing during the current trading interval (0044-0067);
  - e. where, comparing the timestamp with a first predetermined time set during the trading interval; comparing a time the order was received with a second predetermined time set during the current trading interval; and qualifying the order if both the timestamp is less than the first predetermined time and the time the order was received is less than the second predetermined time (0044-0067).
5. In reference to claims 2-4, Brown teaches a trading interval including a fixed amount of time; a trading interval including a variable amount of time defined by the trading system; and the trading system defining a trading cut-off time during each trading interval (0015; 0050-0067).

6. In reference to claims 5-8, Brown discloses a time analysis system qualifying orders by comparing the time stamp for each order with the trading cut-off time for the current trading interval; a trading system defining an effective endpoint for each trading interval based on a computational time of the market maker; a time analysis system further qualifying orders by comparing a time the order was received by the market maker with the effective endpoint of the current trading interval; and a trading system executing each order that qualifies for processing at the call auction of the current trading interval unless an order price does not meet a price fixed by the trading system (0015; 0044-0056; 0061-0067).

7. In reference to claim 9, Brown teaches a trading system that places each order that does not qualify for processing into a queue for consideration during a subsequent call auction (0015). In reference to claim 10, Brown teaches a system for broadcasting price quotes to each of the nodes in the network (0015). In reference to claims 12 and 13, Brown teaches a means for examining timing information that compares a time the order was received with an effective endpoint set during the current interval to determine if the order qualifies for processing; and a means for examining timing information that compares a time the order was received with an effective endpoint set during the current interval to determine if the order qualifies for processing (0015+).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 14, 16-21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Madoff et al (US Patent Pub. US 2002/0019795 A1, hereinafter Madoff). In reference to claims 14, 16-21 and 23-24, Brown teaches: an electric marketplace via a network that qualifies orders. However, Brown does not disclose an electronic exchange wherein the market participants submit order to the network from user interfaces that communicate with the network nodes; an electronic exchange wherein the user interfaces comprise web browsers; an electronic exchange wherein the user interfaces comprise cellular devices; an electronic exchange wherein the market information further includes quote information established at a previous call auction; an electronic exchange, further comprising means for ensuring that all network

nodes receive quote information within a predetermined window of time; an electronic exchange, wherein the quote information is distributed over the network using Pub/Sub technology. However, Madoff discloses a method, system and apparatus for the above in a trading system (0017+). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have utilized the above technology regarding electronic exchange of Madoff to modify the trading system of Brown because the additional information and ways to submit bids would be user-friendly and make the trading system more efficient.

9. Additionally, in reference to claims 26-28 and 30-33, Madoff discloses the price quote being distributed using a Pub/Sub technology (0017-0019); the order being submitted via a browser (0017-0019); the order being submitted via a cellular device (0015; 0017-0019); the examining step comparing a time stamp to a predetermined time set during the current trading interval (0055-0057); a step of comparing a time the order was received by the market maker with a second predetermined time set during the current trading interval (0055-0057); a step of processing the order if it qualifies, wherein the processing step includes the steps of determining if an order meets a price set by the market maker at the end of the current trading interval and executing the order at the end of the current trading interval (0055-0057); a step of considering the order for processing during a subsequent interval if the order does not qualify (0026-0027). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have utilized the above technology regarding quote information

and bidding of Madoff to modify the trading system of Brown because the additional information and ways to submit bids would be user-friendly and make the trading system more efficient.

10. Claims 22 and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Madoff, and further in view of Sheynblat et al (US Patent No. 6,839,021, hereinafter Sheynblat). The combination of Brown and Madoff discloses an electronic exchange implemented over a network with network nodes, gateway agents and a market maker system as discussed above. The combination of Brown and Madoff does not disclose the gateway agents obtaining times for the time stamps from a global positioning system. Sheynblat discloses obtaining times for time stamps from a global positioning system (col. 3, lines 9-67 – col. 4, lines 1-2). It would have been obvious to one with ordinary skill in the art to modify the electronic exchange implemented over a network with network nodes, gateway agents and a market maker system to include obtaining times for time stamps from a global positioning system because Sheynblat discloses using the times for time stamps from a global positioning system for use on a network, such as the Internet, or other types of computer networking systems (col. 12, lines 21-38).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jocelyn Greimel whose telephone number is (571) 272-

3734. The examiner can normally be reached Monday - Friday 8:30 AM - 4:30 PM EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached at (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jocelyn Greimel  
Examiner, Art Unit 3693  
June 19, 2007

 6/20/07  
JAMES A. KRAMER  
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